



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/167480

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 23, 2015, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Office of the Inspector General (OIG) in regard to FoodShare benefits (FS), a hearing was held on September 16, 2015, by telephone. A hearing set for August 18, 2015 was rescheduled at the petitioner's request. A hearing set for September 9, 2015 was rescheduled at the OIG's request.

The issue for determination is whether the agency correctly imposed a one-year sanction on petitioner after she was found guilty of an FS fraud violation.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Nadine Stankey  
Office of the Inspector General  
1 West Wilson Street  
Madison, WI 53701

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of [REDACTED]. She formerly resided in Brown County.
2. After a trial on May 26, 2015, petitioner was found guilty on violating Brown County ordinance 30.05(2), "Interfering with Proper Administration of Public Benefits", a subsection of the ordinance entitled "Prohibiting Fraud In Public Assistance." The charging document issued to

petitioner informed her that a conviction would result in a one-year bar from receiving FS for a first violation. See Exhibit 2, page 2.

3. Evidence brought forth in the Brown County case was that two stores named [REDACTED] and [REDACTED] were trafficking FS by allowing recipients to use FS to pay off debts, by providing cash for FS, and by providing a banned stimulant plant called khat in exchange for FS. The stores were shown to have virtually no stock, in particular no fresh meat, and evidence showed that large purchases were extremely unlikely. Petitioner was shown to have made 16 purchases of over \$100 at the stores in 2013.
4. Petitioner had no prior program violations. Following the guilty verdict the state FS agency imposed a one-year bar on petitioner receiving FS.

### **DISCUSSION**

7 C.F.R. §273.16(b) provides as follows:

- (1) Individuals found to have committed an intentional Program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:
  - (i) For a period of twelve months for the first intentional Program violation....

Similarly, the Department's FS Handbook, §3.14.1, provides:

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,
3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or
4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

The definition of an IPV is found at 7 C.F.R. §273.16(c):

Intentional Program violations shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

The sanction is only against the individual found guilty. Other family members remain eligible for FS.

Petitioner testified that she did not violate any program rules. She explained that she used the FS card to buy expensive Halal meat, despite the stores having virtually no meat in stock.

The issue is whether the Brown County judgment of a violation of the welfare fraud ordinance is sufficient to impose a one-year sanction. I conclude that it is sufficient. The federal regulation provides that a sanction can be imposed based upon the judgment of a local court. The charge against petitioner was that she intentionally violated FS rules in the use of her card. The definition of a program violation is that the person committed *any act* that violates program regulations in using, presenting, transferring, acquiring, receiving, or trafficking FS. The guilty verdict by a Brown County judge following a trial is sufficient to meet that standard.

Petitioner testified that she was not at the trial and thus did not testify. I cannot make a judgment on how the trial was conducted. Petitioner was found guilty, and under the FS regulations a one-year sanction can be imposed.

### **CONCLUSIONS OF LAW**

The OIG correctly imposed a one-year FS sanction against petitioner following a Brown County court judgement that she violated an FS fraud ordinance.

**THEREFORE, it is**

**ORDERED**

That the petition for review is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 18th day of September, 2015

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAMail@wisconsin.gov](mailto:DHAMail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 18, 2015.

Office of the Inspector General  
Division of Health Care Access and Accountability  
[NadineE.Stankey@dhs.wisconsin.gov](mailto:NadineE.Stankey@dhs.wisconsin.gov)